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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
WORCESTER DIVISION  
CIVIL ACTION NO. 1785CV00789D

TOWN OF BOLTON and  
TOWN OF STOW,  
Plaintiffs

v.

ALAN DIPIETRO,  
Defendant

PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS

**FILED**

JUN 05 2017

ATTEST:

*[Signature]* CLERK

This is an action by the Towns of Bolton and Stow to enforce the Wetlands Protection Act, M.G.L. c. 131, § 40 (the "WPA") and related state and municipal wetlands regulations. Defendant, Alan DiPietro's ("Mr. DiPietro") Motion to Dismiss does not deny the Towns' verified allegations that he cleared or altered approximately 67,000 square feet of protected wetland areas – roughly 1.5 acres, and erected unauthorized structures and fencing in protected areas. Instead, Mr. DiPietro moves to dismiss the Verified Complaint arguing that: (1) he is exempt from the WPA for agricultural uses, and (2) the Towns failed to file a Request for Determination of the applicability of the WPA to his alleged agricultural activities. Neither argument has merit.

*[Handwritten mark]*

First, the "agricultural exemption" to the WPA applies only to the "normal maintenance or improvement of land in agricultural use," and does not apply to bringing new land into agricultural production. M.G.L. c. 131, § 40, clause 18; see also definition of "Agriculture" in 310 CMR 10.04. Mr. DiPietro's property was not pre-existing agricultural land (see Verified Complaint, ¶37), and he has presented no facts suggesting otherwise. In addition, when

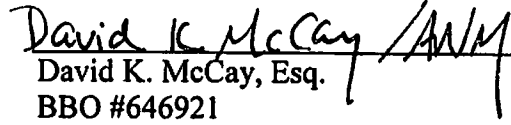
Mr. DiPietro first raised his agricultural exemption defense in response to the Towns' enforcement efforts in 2015, the Towns' promptly responded. On April 27, 2015, the Stow Conservation Commission provided Mr. DiPietro with information regarding the scope of the agricultural exemption, including relevant pages from the Commonwealth's "Farming in Wetland Resource Areas" publication. See Exhibit J to Verified Complaint. Stow reiterated its position that Mr. DiPietro's alteration of the wetlands Resource Areas was not exempt from the WPA but invited him to submit any information that he wanted the Conservation Commission to consider. Mr. DiPietro failed to do so. Because the Property is not pre-existing agricultural land, it is not exempt from the WPA, state regulations or the Town Bylaws. Therefore, Mr. DePietro's "agricultural exemption" defense should be rejected.

Second, the Towns have no obligation to file or obtain Mr. DiPietro's suggested Request for Determination of Applicability ("RDA"), and the regulatory scheme under the WPA does not contemplate municipalities making such applications. Under 310 C.M.R. 10.05(a), any person who desires an RDA can apply to the Conservation Commission, which then makes the determination. Mr. DiPietro's Motion to Dismiss suggests that a town would formally apply to itself before enforcing its own wetlands bylaw, which is clearly not what the WPA and the regulations intended. The Towns have no obligation to make an RDA filing and Mr. DiPietro can point to no such obligation. His Motion to Dismiss on that basis should fail.

WHEREFORE, the plaintiffs, Town of Bolton and Town of Stow, request that the Defendant's Motion to Dismiss be denied.

TOWN OF BOLTON and  
TOWN OF STOW

By their attorneys,

  
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Dated: June 5, 2017

CERTIFICATE OF SERVICE

I, David K. McCay, hereby certify that I have this day served a copy of the foregoing document, by first class mail, to Alan DiPietro, 201 Maple Road, Stow, MA 01775.

  
David K. McCay, Esq.

Dated: June 5, 2017